

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD.

SPECIAL CIVIL APPLICATION No 2427 of 1986

For Approval and Signature :

Hon'ble MR. JUSTICE S.K.KESHOTE

1. Whether Reporters of Local Papers may be allowed to see the Judgment ?
2. To be referred to the Reporter or not?
3. Whether Their Lordships wish to see the fair copy of the Judgment ?
4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder?
5. Whether it is to be circulated to the Civil Judge?

DABHOI NAGARPALIKA
VERSUS
JAYATILAL M JARIVALA

Appearance:

MR PC MASTER for the Petitioner
MR JS PARASHAR for MR TR MISHRA for the
Respondent

CORAM : MR JUSTICE S.K. KESHOTE
Date of Decision : 30/12/1999

C.A.V. JUDGMENT

1. The respondent-workman having felt aggrieved of the action of the petitioner to terminate his service

w.e.f. 28-2-1976, through Union raised an industrial dispute which was referred to the Labour Court, Baroda where it was registered as Reference No. 876/76 and ultimately therein the award came to be passed for reinstatement with full backwages. But the award was partly complied with, that is, the reinstatement has been made and 50% of back wages has been given. The respondent for getting full benefit of the award approached to the Labour court, Baroda by an application under section 33(C) (2) of the Industrial Disputes Act, 1947. Under the impugned order, this application was registered as Recovery Application No. 162 /82 and it came to be decided and the Labour Court has ordered that the applicant is entitled to get the total amount of Rs.46,200/- from the petitioner. Having felt aggrieved of this order of the Labour Court, Baroda, the petitioner filed this petition under Article 227 of the Constitution of India.

2. Shri P.C. Master, learned counsel for the petitioner contended that the award of the Labour Court ordering therein for reinstatement with full backwages of the respondent-workman was not challenged by it before this court as the respondent-workman has entered into a settlement with it. He made reference to the document on the record of this special civil application as annexure 'A' dated 13th October, 1981 whereunder the respondent-workman has given out that whatever Shri Chandubahi etc. meet and decide is acceptable to him. Shri Master contends that in the meeting of the General Body dated 6-10-1981 vide resolutions No.58 and 59 a Committee was constituted to decide this matter which consisted of (i) Shri FakirMohammed Cinemavala (Chairman) (ii) Shri Kanchanlal Ambalal Soni and (iii) Shri Chandubhai Motibhai Tadvi. One of the member is Chandubhai Motibhai Tadvi. That Committee has decided that the respondent-workman has given consent to accept 50% of the amount of backwages payable to him and accordingly it is decided to pay 50% of the amount of backwages to the workman- respondent. It has further been decided that as a result of the aforesaid decision the petitioner will not approach to the High Court. The amount that has to be fixed as a result of this decision be fixed with all the increments due to him from the date he is relieved till the date he is reinstated. The respondent-workman shall resume the duties from 20-10-1981. His services shall be treated as continuous from the date of his appointment. It has next been contended that when the respondent-workman has entered into the settlement he is estopped from raising any dispute or from filing any application under section 33

(C) (2) of the Act, 1947 and in a case where in furtherance of this settlement the petitioner has not filed the special civil application before this court. The petitioner has paid 50% of the backwages to the respondent-workman which he accepted without any objection. He has been given all other benefits. It is the contention of the learned counsel for the petitioner that after accepting these benefits a dishonesty developed in the mind of the respondent-workman and he filed application under section 33 (C) (2) for computation of the benefits under the award or at the instance of some other person he has initiated these proceedings. Once the matter has been settled between the parties, Shri Master contends that the workman is estopped from raising any dispute. He has to abide by the decision arrived at under the settlement and in support of his contention he has relied on the decision of the Apex Court in the case of Workmen, M/s. Hindustan Lever Ltd. vs. Management, M/s. H.L. Ltd. reported in AIR 1984 SC 516.

3. The respondent has not filed reply to the special civil application. However, Shri Parashar, learned counsel for the respondent orally contended that the respondent-workman has never agreed upon to settle the matter. The settlement can only be there when the matter is not decided and not when the award has been passed in favour of the respondent-workman. It has next been contended that the petitioner has not produced on the record of this special civil application any material whatsoever whereunder the respondent-workman has agreed to accept the 50% of backwages only. Annexure 'A' what Shri Parashar contends nowhere reveals that the respondent-workman has agreed for 50% of backwages. Carrying this contention further Shri Parashar submits that if we go by the resolution, document annexure 'B' at page No. 19 it is clear that that decision has been given on the ground that the respondent-workman has consented to accept 50% of amount payable to him as backwages but no such consent is available on the record of this special civil application. Shri Parashar submits that in such matter there is no question of any estoppel. Otherwise also in the matter where the final award has been passed it is more obligatory on the part of the Management to see that the compromise has to be arrived into between the parties before the Labour court. Instead of settling this matter in the manner in which what it has been exhibited to be decided if it would have been really a matter of settlement then the settlement should have been arrived into between the parties and the same

should have been produced before the Labour court. The Labour court should have accepted the settlement where it is ultimately satisfied that it is in favour of the workman. If the award has been passed and then the settlement is arrived at between the parties and where it is found to be beneficial to the workman a satisfaction of the award has to be recorded accordingly by the Labour Court. In his submission though the provisions of C.P.C. may not be applicable strictly to the proceedings before the Labour Court but the principle analogous to the same may be made applicable to such proceedings so that there may not be fraud or any exploitation or unfair Labour practice by the Management in such matters. Lastly it is contended that it is open to the petitioner to challenge the award if it considers that the same is not legal and valid but this way of settling the matter is unknown to the jurisprudence of Labour laws and it is a clear case where the respondent-workman has been exploited. He is at the receiving end and in case while accepting 50% of backwages he has not raised any objection it will not disentitle him from filing of the application under section 33 (C) (2) of the Industrial Disputes Act, 1947. The respondent-workman is not in a bargaining position and he has all the right to accept whatever benefits are given to him by the employer and if something remains to be given to him then he has all the right to raise the claim before the appropriate authority. The decision on which reliance has been placed by the petitioner is of little help to the petitioner.

4. Shri Master in rejoinder contended that in fact it is a case where the workman has played fraud with the petitioner. Firstly, it has given out that he is ready to settle the matter and when the matter has been settled he has filed the application. The right of the petitioner to file the writ petition before this court has been prejudiced by the conduct of the respondent-workman.

5. I have given my thoughtful consideration to the submissions made by the learned counsel for the parties.

6. In this case, the facts which are not in dispute are to be briefly stated and the same are as under:

On termination of the services of the respondent - workman, an industrial dispute has been raised through workers' Union of which at the relevant time Chandubhai Motibhai Tadvai was the General Secretary. Shri Chandubhai Tadvai was also the member of Dabhoi Nagar

Palika, Dabhoi, District Baroda. An award has been passed by the Labour Court in favour of the respondent workman. There were two workmen whose services were terminated i.e. the respondent and one Vasantrao Ramchandra Kalgude. That other workman has also raised an industrial dispute through Union. Awards have been passed in favour of both the workmen for reinstatement with full backwages. Document annexure 'A' has been signed by both the workmen. A decision has been taken by the Committee of three members including Chandubhai M. Tadvani on 17th October, 1981 to reinstate both these persons and give 50% of backwages. Copy of this resolution was endorsed to both the workmen. There is a letter of the Chief Officer of the Nagar Palika dated 19th October, 1981 annexure 'C'. Then there is a document annexure 'D' dated 22-10-1981 under which the petitioner submitted his joining report in pursuance of the letter dated 19th October, 1981.

7. It is not in dispute that the respondent workman after decision of the Committee of three members constituted under the resolution of the General Body dated 6th October, 1981 joined services of the Municipality without any protest and objection. It is true that before the Labour Court in the proceedings under section 33 (C) (2) of the Industrial Disputes Act it has come up with the case that copy of the resolution annexure 'B' was not received by the workman and the Labour court also prima-facie accepted this fact. However, from the award it does come out that the Labour court has not accepted that the document annexure 'A' is not signed by the workman. From the reading of the order of the Labour court I find that this document annexure 'A' has been accepted by the workman but its contention was that thereunder he has not agreed for any settlement of the award. It comes out that the respondent - workman has tried to give out the explanation that this document is taken for his acceptance of taking backwages in installments and that plea of the workman found favoured with the Labour court. The other workman was also signatory to that document. He accepted the resolution and in terms thereof he was satisfied with 50% of backwages. The respondent - workman joined the services only after letter dated 19th October, 1981 of the Chief Officer. In his joining report he made reference of the letter of the Chief Officer. So the facts are that on 13th October, 1981, there was a writing of the workman. On 17th October, 1981, there was a decision of the Committee. On 19th October, 1981 there was a letter of the Chief Officer directing the workman to join the post

and his letter dated 20th October, 1981. In the statements, he admitted that he put his signature on Ex.13/1 which is the document, here as annexure 'A'. But it was as per his case about installments. He further admitted in the examination that he has reported for duty as per document Ex.13/1, the letter of Chief Officer dated 19th October, 1981. He further admits that he joined the duties after writing a letter Ex.13/4, which is annexure 'D' on the record of this special civil application.

8. In these admitted facts of this case, even if it is taken that the respondent- workman has not received the decision of the Committee dated 17th October, 1981, the Labour court has committed serious illegality in treating document annexure 'A' to be only a writing given by the respondent- workman accepting the backwages in installments. I fail to see on what basis this could have been read in this document. The plea of the petitioner that this document has been given by the respondent- workman to accept the decision taken by Chandubhai and they have in fact agreed to accept 50% of backwages is not accepted by the Tribunal then how it could have been accepted that this writing was given for installments of backwages. A simple reason for which this document was not accepted in favour of the petitioner could not have been read by the Labour court in favour of the workman. It is a case where the Labour Court has proceeded as if when the workman has approached to it it has to be granted some relief. From the facts of this case, it clearly borne out that the respondent- workman has not come up with clean hands. He agreed to settle this matter on terms as whatever is decided by the head of the Union and which head of the Union was one of the members of the Committee which decided that the workman should be paid 50% of backwages. This is the decision which is taken on the consent of the respondentworkman. It is really a dishonesty on the part of the workman after joining services he backed out from his own settlement/consent and filed this application under section 33 (C) (2) of the Industrial Disputes Act. The respondent- workman has not examined Chandubhai Motibhai Tadvai in the proceedings under section 33 (C) (2) of the Industrial Disputes Act. Otherwise also the workman as per the letter of the Chief Officer dated 19th October, 1981 vide his writing dated 22nd October, 1981 joined the services. In the letter of the Chief Officer dated 19th October, 1981, reference has been made to the fact that the resolution dated 17th October, 1981 must have been received by him. It has further been stated that this

resolution has been sent on the same day through Union Secretary Shri Chandubhai Motibhai Tadvī. Then it is mentioned that in pursuance of that resolution the respondent should remain present in the officer before office hours on 20th October, 1981 and shall take over the charge from present overseer. This resolution of 17th October, 1981 was sent through Chandubhai Motibhai Tadvī and mere word of the respondent - workman that he has not received the same could not have been accepted unless he examined Tadvī in the proceedings and when he would have stated that it was not delivered to him. It is a case where the respondent workman now wants to take undue benefit after securing his reinstatement. Because of this writing of the respondent, the petitioner has not challenged the award of the Labour court. After this letter of 19th October, 1981 if the respondent would not have received the resolution dated 17th October, 1981 he should have wrote the letter to the Chief Officer to give a copy of the resolution to him. From the fact that he has not stated anything in his letter dated 22nd October, 1981 for non receipt of the copy of the resolution it has to be accepted that he received the said resolution.

9. There is yet another aspect from which this matter needs to be considered. The resolution of 17th October, 1981 has very strong bearing in the matter and from the letter of the petitioner dated 22nd October, 1981 it is also borne out that he knew what that means. That is only possible when he is aware of the contents of the resolution and the fact that he has not demanded the copy of this resolution or not mentioned anything for non receipt of the same in the letter dated 22nd October, 1981 it is a case where it can be assumed and presumed and accepted that he knows everything about this resolution and he agreed with the terms of the same. The petitioner joined the services without any protest and after joining thereof it is to be taken and it has to be taken against him that he agreed with the terms of the resolution dated 17th October, 1981 and he was entitled only for 50 % of the backwages. It is true that in such matter normally the terms of agreement are to be produced before the Labour Court for recording of the satisfaction of the award but the provisions of C.P.C. are not strictly applicable and also it is not unknown that out of court settlement are entered into in between the parties more so where the workmen are represented by workers' Union. Here also, the respondent - workman was represented by workers' Union in the reference and after the award he has accepted the reinstatement with condition as per resolution dated

17th October, 1981 but thereafter he filed this application under section 33 (C) (2) in his individual capacity. Shri Chandubhai was the person who got the award for the petitioner from the Labour Court the very fact that the workman under provision 33 (C) (2) of the I.D. Act, 1947 has approached to the labour court individually goes to show that this was compromised there. In these proceedings, at the cost of repetition it is to be stated that the workman has not examined Shri Chandubhai. He was the most relevant and material evidence in the matter and for non production of him, the Labour Court should have drawn an adverse inference against the workman. Looking to the fact that Chandubhai was the person who fought for the workman, therein nothing unreasonable if he has agreed to give power to him to settle the matter with the petitioner.

10. Taking into consideration the totality of the facts of this case, there is an error apparent on the face of the order of the Labour court not to take document Ex.13/1 as the settlement of the matter by the parties. It is a case where the respondent- workman has agreed to settle this matter through Chandubhai on terms and conditions as he agreed and what precisely has been done under the resolution dated 17th October, 1981 which is binding on respondent. The application filed by the respondent workman under section 33 (C) (2) of the Industrial Disputes Act before the Labour Court in fact was not maintainable. It is clearly a dishonest attempt on the part of the respondent - workman to back out from this own settlement and to take undue advantage. This award can not be allowed to stand otherwise it will result in causing irreparable injury to the petitioner.

11. As a result of the aforesaid discussion, this special civil application succeeds and the same is allowed and the order dated 29th January, 1986 of the Labour Court, Vadodara in Recovery Application No. 162 of 1982 is quashed and set aside. Rule is made absolute accordingly. The respondent - workman is directed to pay Rs.2000/- as costs of this petition to the petitioner. As a result of the acceptance of this special civil application, whatever amount paid by the petitioner to the respondent - workman is recoverable from the respondent - workman by the petitioner.
